

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:	:	Chapter 11
	:	
NO. 1 CONTRACTING CORPORATION,	:	Case No. 5:10-BK-01755
	:	
Debtor	:	(John J. Thomas, U.S.B.J.)
	:	
AUSTIN POWDER COMPANY,	:	
	:	
Movant	:	
	:	
v.	:	Contested Matter
	:	
NO. 1 CONTRACTING CORPORATION,	:	
Debtor,	:	
	:	
Respondent	:	

**MOTION OF AUSTIN POWDER
COMPANY FOR RELIEF FROM AUTOMATIC STAY**

Pursuant to Section 362(d) of the Bankruptcy Code of 1978 (the “Bankruptcy Code”), as amended, 11 U.S.C. §§362(d), Austin Powder Company (“Austin Powder”), by and through its counsel, Caverly, Shea, Phillips & Rodgers, LLC, respectfully moves the Court as follows:

1. Austin Powder is an Ohio corporation with its principal place of business located at 25800 Science Park Drive, Cleveland, Ohio 44122.

2. No. 1 Contracting Corporation (the “Debtor”) is a Pennsylvania corporation with its principal place of business located at 49 South Main Street, Ashley, Pennsylvania 18706.

3. On March 5, 2010, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code to the above term and number.

4. At the time of the filing of the petition, there was pending in the United States District Court for the Middle District of Pennsylvania an action by Austin Powder against the Debtor and Dickson Development Partnership (the “District Court Action”).

5. In the District Court Action, Austin Powder seeks to recover the sum of \$331,643.35 together with costs and interest for blasting services provided by it under a contract with the Debtor on property currently owned by Dickson Development Partnership.

6. The claim of Austin Powder is duly scheduled in this case as an unsecured, non-priority claim in the amount of \$325,562.87 and Austin Powder will not seek collection of its claim against the Debtor other than as an unsecured, non-priority claim in this case.

7. Austin Powder requires relief from the automatic stay in order to pursue its action against Dickinson Development Partnership, in which action the Debtor is an indispensable party.

8. By reason of the foregoing, Austin Powder seeks relief from the automatic stay for cause in order to prosecute the District Court Action.

WHEREFORE, Austin Powder Company requests an Order relieving it from the automatic stay and authorizing it to proceed with the prosecution of the District Court Action, but reserving to this bankruptcy proceeding the enforcement of any judgments obtained against the Debtor therein.

CAVERLY, SHEA, PHILLIPS
& RODGERS, LLC

By: /s/Charles A. Shea III
Charles A. Shea, III, Esquire
15 Public Square, Suite 210
Wilkes-Barre, PA 18701
(570) 823-0101

Counsel to Movant, Austin Powder Company

CERTIFICATE OF CONCURRENCE
PURSUANT TO BANKRUPTCY RULE 4001-1F

Pursuant to Local Bankruptcy Rule 4001-1(f), the undersigned hereby certifies that he has obtained the concurrence of counsel for Debtor No. 1 Contracting Corporation in the relief sought by the foregoing Motion of Austin Powder Corporation for Relief from Automatic Stay.

/s/ Charles A. Shea, III
Charles A. Shea III, Esquire

Counsel to Movant Austin Powder Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused to be served a true and correct copy of the Motion of Austin Powder Company for Relief from the Automatic Stay upon:

Ronald V. Santora, Esquire
Bressett and Santora
1188 Wyoming Avenue
Forty-Fort, PA 18704

Gregory Benjamin Schiller, Esquire
U.S. Department of Justice
Office of the U.S. Trustee
228 Walnut Street, 11th Floor
Harrisburg, PA 17101

Counsel for Debtor

Counsel to U.S. Trustee

concurrently upon filing by Electronic Case Management and upon:

No. 1 Contracting Corporation
49 South Main Street
Ashley, PA 18706

Debtor

by depositing the same in the United States first class mail, postage prepaid, on July 26, 2010 addressed as set forth above.

/s/Charles A. Shea III
Charles A. Shea III